

22-25 clearly are directed to a “method for reducing exercise induced pulmonary hemorrhage in a horse.” Mooney is directed to a nostril distender device for horses. Nothing in Mooney or any other reference of record teaches or suggests the presently claimed method for reducing exercise induced pulmonary hemorrhage in horses.

Accordingly, because Mooney, alone or in combination with any reference of record, neither teaches nor suggests the method claimed, the Examiner’s rejection under 35 U.S.C. §102(b) is traversed.

#### **Rejections under the Judicially Created Doctrine of Obviousness-Type Double Patenting**

The Examiner rejected claims 22-45 under the judicially created doctrine obviousness-type double patenting. Applicants do not acquiesce to the rejection. However, to expedite prosecution of the present case, and because any patent issuing from the present application will terminate on the same date, with or without a terminal disclaimer, a terminal disclaimer in compliance with 37 C.F.R. §1.321 is provided herewith. As the Examiner has made no other rejection of claims 26-45, it is believed that the submitted terminal disclaimer puts these claims in condition for allowance.

#### **Information Disclosure Statement**

On December 30, 1999, Applicants’ filed an Information Disclosure Statement and an attached Form 1449 (2 pages listing 50 references). On February 11, 2000, Applicants filed a Supplemental Information Disclosure Statement and an attached Form 1449 (1 page 2 references). A copy of the each of these Form 1449s, marked as being initialed by the Examiner, was not mailed with the Office Action. However, a Form 1449 submitted with a Second Supplement Information Disclosure Statement, mailed July 20, 2000, was returned and initialed

as being considered by the Examiner. Accordingly, pursuant to the provisions of MPEP §609, it is requested that the Examiner return a copy of the Forms 1449, filed December 30, 1999, and February 11, 2000, marked as being considered and initialed by the Examiner and returned to the undersigned with the next communication.

**Summary**

It is respectfully submitted that each of the presently pending claims (claims 22-45) are in condition for allowance and notification to that effect is requested.

The Examiner is invited to contact Applicants' representative at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

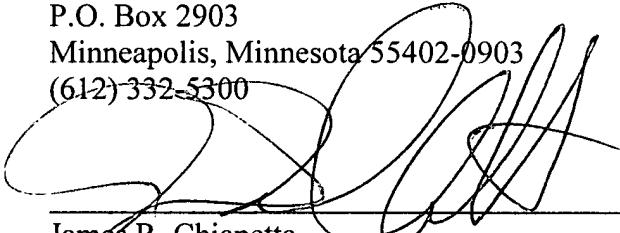
Respectfully submitted,

MERCHANT & GOULD P.C.

P.O. Box 2903

Minneapolis, Minnesota 55402-0903

(612) 332-5300

  
James R. Chiapetta  
Reg. No. 39,634  
JRC:las

Date: 11/21/00



**THE STATEMENT BELOW IS FOR OFFICE USE ONLY**

In accordance with the decision granting the petition filed on \_\_\_\_\_, \_\_\_\_\_, this terminal disclaimer is accepted. The period of patent lapse specified above has been accepted as equivalent to \_\_\_\_\_ months.



Petitions Examiner

RECEIVED  
DEC -5 2003  
TC 3700 MAIL ROOM

